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CITATIONS

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1948

No. 177

J. R. MASON,
Petitioner,
vs.
PARADISE IRRIGATION DISTRICT,
Respondent.

PETITIONER'S REPLY TO BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Comes now J. R. Mason, petitioner pro se submitting his reply brief in the above entitled cause.

It is vigorously denied that "all points raised by petitioner in his petition were decided in the action of *Mason v. Paradise I. D.* (supra)," as contended by respondent's brief, on page 3.

The only question presented and adjudicated in the appeal from the interlocutory decree was that the principle of equality between creditors applied in the *Texas v. Tabasco School District* cases, 133 F.2d 196, 142 F.2d 58, would be modified.

The constitutional questions presented in this appeal from the final decree did not exist before the entry of the final decree, and it would have been premature to present them as an actual controversy before the provisions in the final decree are known. Appeals from both interlocutory and final decrees in Chapter IX proceedings are authorized.

It is respectfully submitted that respondent has cited no Federal authority which allows a State, or any of its political subdivisions to violate the taxing and land tenure statutes of the State, over the complaint of a holder of valid, binding and unpaid statutory claims.

Respondent has not questioned the following crucial statements in the instant petition:

> "The California Irrigation District Act is a land law, the full operation of which could never infringe the equal right of all persons to acquire, use and hold land, guaranteed by the 14th Amendment, as recently construed by this Court in the *Shelley v. Kraemer* case. But, the decree below, if it stand, will only serve to make this non-

discriminatory land law discriminatory * * *". (Page 37.)

"Respondent has no standing or authority to invoke the bankruptcy jurisdiction in order to escape its duty to assess and collect the ad-valorem land assessments made mandatory by applicable State law." (Page 17.)

"The land in Paradise Irrigation District is all within the dominion and sovereignty of California and the power of California to control its private ownership and devolution is paramount." (Page 17.)

"Respondent is the alter ego of the State, without pecuniary rights, and hence its statutory land tax affairs are as immune from Federal interference, as the affairs involved in (cases cited)." (Page 23.)

"The Supreme Court of California has decided that all land and property of an irrigation district is property owned by the State, dedicated for the uses and purposes of the Irrigation District Act, one of which is the payment of every bond in full." (Page 23.)

The original, unrefunded bonds owned by petitioner "are valid, binding and unpaid statutory trust obligations, independent of and wholly unaffected by the 1934 contract between respondent and R.F.C." (Page 26.)

The judgment of dismissal in favor of J. R. Mason "is res adjudicata under the rule laid down in *Chicot County D.D. v. Baxter State Bank*, 308 U.S. 371." (Page 34.)

Petitioner's bond obligations

> "are constitutional and statutory land tax anticipation trust certificates, constituting a first charge upon the rents, issues and profits of all land within the district, until they are paid, with statutory 7% interest * * *". (Page 40.)

The permanent restraint, applied for the first time in the final decree is

> "in conflict with the equal protection clause," and "deprives petitioner of his claim, contrary to the 5th and 10th Amendments * * *". (Page 41.)

The interlocutory decree only restrained the holders of original bonds

> "from attempting collection * * * by legal proceedings or otherwise * * * *pending the entry of the final decree.*" (R. 53, Case No. 306.) (Italics ours.)

The only point considered in the *Mason v. Paradise*, 326 U.S. 536, case was that the rule of equality applied in *Texas v. Tabasco School District* (supra), by the Fifth Circuit should be modified.

Thus the argument by respondent, at page 13, that this Court has previously decided "In the *Mason* case (supra)" that the *permanent* injunction in the *final* decree is not an error, is vigorously denied. Such an injunction had not been entered by the District Court before the final decree, and it goes beyond the interlocutory decree provision for an injunction "pending the entry of the final decree". Respondent has shown no provision in any chapter of the Bankruptcy Act,

including Chap. IX the base of this proceeding, which authorizes the *permanent* injunction, as applied by the Court below, and which contravenes the Federal statute shown on page 22 of petitioner's brief, and controlling decisions by this Court, listed on page 23.

If it were true, as respondent contends, that "There is nothing further to be decided by this Court than was decided by it in the said *Mason* case" (page 13) a District Court could impose penalties in a final decree from which no appeal could be taken either by a creditor or by the bankrupt, and it could confiscate statutory claims which are secured by the Constitutions of Nation and State, as here.

Even had the fundamental constitutional questions presented in the instant petition, been raised in the appeal from the interlocutory decree, the fact that they were not decided by this Court would allow them to be asked again. Appeals from final as well as from interlocutory decrees in a Chap. IX proceeding are authorized.

The permanent injunction, as applied in the final decree contravenes the 5th and 10th Amendments, because petitioner is restrained from proceeding in the State Court to force State officials to assess and collect the land value taxes required by applicable law, and to obey California law, as construed by the California Supreme Court, and by controlling decisions of this Court, commencing with *Fallbrook I. D. v. Bradley,* 164 U.S. 112, to *Cowan v. Fallbrook,* 320 U.S. 735.

Respondent does not suggest that its taxing power is inadequate to pay petitioner's claim, and offers no showing that the applicable California law permits it to fix any annual assessment or tax rate lower than is necessary to pay all valid obligations due, or to become due the following year. In refunding its obligations, even if all creditors except one have consented, the California law prohibits respondent from making any attempt to escape paying the bonds of that one creditor, in the order provided by statute. *Selby v. Oakdale I. D.*, 140 C. A. 171; *Provident v. Zumwalt*, 12 Cal. (2d) 365. Respondent does not deny that its duty and obligation to petitioner, in this respect is a continuing statutory duty, as pointed out on page 20 of the instant petition.

It has been clearly and unequivocally decided by this Court that the private holders of land in such a district "have no constitutional right to be heard on the question of benefits." *Fallbrook v. Bradley*, 164 U.S. 112; *Valley Farms Co. v. Westchester*, 261 U.S. 155; *Roberts v. Richland I. D.*, 289 U.S. 71.

In *Rittenoure v. City of Edinburg*, 159 F.2d 989, the Fifth Circuit Court pointed out that

> "* * * by 11 USCA § 22 a municipal corporation is excluded from the general bankruptcy law, even as a voluntary bankrupt. The proceeding here involved was under Chapter 9, which is a special extension of the Bankruptcy Act to local taxing districts whereby they may seek a composition of their debts; * * * Such a proceeding, while within the bankruptcy powers of the United States, is not a true bankruptcy in that the prop-

erty of the debtor is not surrendered to the Court *nor are its debts discharged.*" (Italics ours.)

The constitutional protection for investors in lawful bonds issued by a State, or its local bodies has been construed and applied by this Court so often that citations are unnecessary. In the Yale Law Journal, Vol. XLIII, No. 6, is a well documented article reviewing "Administration of Municipal Credit", with scores of citations, and a chapter on "Rights of Creditors after default" on pp. 962-978. As said in *Thompson v. Magnolia Petr. Co.*, 309 U.S. 478, at 481,

> "The Court erred in entering the final decree because it has no summary jurisdiction to adjudicate a controversy to property of which the Court has neither actual nor constructive possession."

Respondent quotes from the opinion of the District Court on the Fourth Point, at page 11. The *Chicot* opinion of this Court on *res adjudicata* had not been issued on March 16, 1939, the date of the District Court hearing. (R. 26/39; Case No. 306.) This finding of the District Court that the original Chap. IX "conferred no jurisdiction upon the Court" (R. 38; No. 306) is in direct conflict with the subsequent announcement by this Court in the *Chicot County* (308 U.S. 371) case, because "the question of the constitutionality of the statute" was actually raised and decided by the District Court, and that determination was final, from and after the time allowed for "direct review upon appeal." (308 U.S. at 377.) The judgment of dismissal of the previous composition pro-

ceeding shows explicitly that the question of the constitutionality of the federal statute was actually raised and decided in 1936 by the District Court, as follows:

> "* * * it appearing to the Court that said provisions of the Bankruptcy Act of 1898 are unconstitutional and void and that the Court is without jurisdiction to entertain the petition for readjustment and settlement of the indebtedness of said Paradise Irrigation District, and good cause appearing therefor," the petition to get approval of the same plan, between the same parties, as here, was dismissed on October 28, 1936. The judgment of dismissal "has never been appealed from and is now final." (R. 88/89; Case No. 306.)

Respondent complains that "This litigation commenced in December, 1937." Petitioner submits that it commenced on December 21, 1935, and was terminated Oct. 28, 1936, under the controlling rule in the *Chicot* case, supra.

In *Commissioner v. Sunnen,* this Court announced on April 6, 1948:

> "Res judicata rule provides that when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their privies are thereafter bound 'not only as to every matter which was offered to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.' (Citations.) The judgment put an end to the cause of action, which can not again be brought into litigation between the parties upon any ground whatever,

absent fraud or some other factor invalidating the judgment * * *

But matters which were actually litigated and determined in the first proceeding can not later be re-litigated. Once a party has fought out a matter in litigation with the other party, he can not later renew the duel."

Respondent has during more than eleven years been attempting to relitigate, and renew the duel he lost on October 28, 1936. It is evident that respondent seeks to ignore the proceeding begun December 21, 1935, involving the same parties and the same attempt to repudiate the valid, binding and unpaid statutory claims owned by petitioner, paying for them only 52.521 cents, without interest. (R. 87/88; Case No. 306.) This litigation was brought to a conclusion on October 28, 1936, according to the controlling *Chicot County* decision by this Court. It is respondent, and not petitioner who has been seeking all these years to proceed just as though this Court had adopted the principle announced by the Circuit Court in the *Chicot County* case.

That respondent abandoned its plan of composition, after October 28, 1936, is evidenced by the payments of interest to petitioner on December 8, 1936, and January 5, 1937, totalling $3,055.95. This interest was "voluntarily paid by the District to Mason." (Respondent's Brief, pp. 7/8.)

Thereafter it was impossible to renew the plan. (R. 156; Case No. 306.) This is shown by the "Amend-

ment to Interlocutory Decree". (R. 200/201; Case No. 306.)

Respondent does not deny that "Both principal and interest upon the contract between respondent and the R.F.C. have been fully and regularly paid all these years, while the money due petitioner has been *unlawfully* denied him and given to the R.F.C." (Page 16.)

The fundamental issue underlying this litigation has been obscured, often deliberately, by a smoke screen of propaganda the effect of which has been to intensify class conflicts by denouncing the owners of public bonds who refused to be bludgeoned or to waive their rights protected by the Constitution, as "Shylock, demanding his pound of flesh", and as "recalcitrants" when they invoke their constitutional rights, as construed by this Court in such cases as *Von Hoffman v. Quincy*, 4 Wall. (71 U.S.) 535; *Fallbrook v. Bradley*, 164 U.S. 112; *Roberts v. Richland I. D.*, 289 U.S. 71.

As this Court said in *Poindexter v. Greenhow*, 114 U.S. 269 (*Virginia Coupons* case):

> "Of what avail are written constitutions if their limitations and restraints upon power may be over passed with impunity by the very agencies created and appointed to guard, defend and enforce them? * * * How else can these principles of individual liberty and right be maintained, if, when violated, the judicial tribunals are forbidden to visit penalties upon individual offenders, who are the instruments of wrong, when-

ever they interpose the shield of the State? The doctrine is not to be tolerated. The whole frame and scheme of the political institutions of this country, State and Federal, protest against it. Their continued existence is not compatible with it. *It is the doctrine of absolutism, pure, simple and naked; and of communism, which is its twin; the double progeny of the same evil birth.*" (Italics ours.)

The concept that the State is a sovereign the basic duty of which is to protect the equal right of all persons to use and hold land, was a revolutionary idea. The notion that all persons have an equal and inalienable right in respect of land tenure was wholly foreign to other forms of government.

Respondent has pointed out no error in petitioner's discussion of this economic principle dealt with under "Factual Background" at pages 11 to 20, where it is shown at page 19 that the California Irrigation District Act is, in legal and practical effect a State Rent Control statute, as follows:

> "The disallowance of the money lawfully belonging to petitioner would have one effect, and one only. It would not affect the rent value of any land in this district, but would only increase the net rent, after taxes, which land speculators could and would capitalize in the price thereafter demanded for title deed to the land. Obviously, if the bond obligations of such a district are reduced, the annual ad-valorem land assessment can then be reduced correspondingly, and other things remaining equal, the price of title deeds to land rises.

> Thus, the effect of the final decree, as applied, is not only to deprive petitioner of his statutory rights secured by the Constitution, but also to infringe the equal right of all persons to acquire, use and hold land guaranteed by the 14th Amendment, as construed in the *Shelley* case, supra."

Franklin D. Roosevelt said we would be

> "safe from the danger of oligarchy just so long as the home rule in the States is scrupulously preserved and fought for whenever it seems in danger."

On another occasion he said that

> "it was clear to the framers of the Constitution that the greatest possible liberty of self government must be given to each State, and that any national administration attempting to make all laws for the whole nation * * * would inevitably result at some future time in a dissolution of the Union itself."

The historian John Fiske said:

> "If the day ever arrives (which God forbid) when the people of the different parts of our country shall allow their local affairs to be administered from Washington—on that day the progressive political career of the American people will have come to an end and the hopes that have been built upon it for the future happiness and prosperity of mankind will be wrecked forever."

In *Great Lakes Dredge v. Hoffman,* 319 U.S. 293, it is said:

"The scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it * * *".

In *Twining v. N. J.*, 211 U.S. 78, 106, it was said:

"We are not invested with the jurisdiction to pass upon the expediency, wisdom or justice of the laws of the States as declared by their courts, but only to determine their conformity with the Federal Constitution * * *".

In the instant case, petitioner is the only party complaining that because of its operation and application in this particular instance, Ch. IX of the Bankruptcy Act works a violation of a constitutional right.

No party has been heard to complain, nor could any validly complain that a reversal would infringe their constitutional right.

Petitioner has sought, these many years, to defend basic principles of constitutional law as construed and applied by this Court, not alone because of his rights, but also in an effort to defend and advance the equal right of all persons to acquire, use and hold the dedicated trust land within the boundaries of respondent, as that equal right to hold land was construed by this Court May 3, 1948, in the *Shelley* case.

There has long been, and is a titanic struggle to monopolize such desirable irrigated California land.

Hearings, S. 912, Senate Public Lands Comm., 80th Cong., 1st Sess., May, June, 1947, contain over 1300 pages of testimony, and Hearings, H. Res. 93, House Public Lands Comm., September, 1947.

The Federal government is investing about $2,000,000,000 in the further reclamation of land in the valley respondent is located in, and if monopolists are to be held in check, and the Federal treasury recover its outlay, it will be because this Court adheres steadfastly to fundamental law, as construed and applied in the cases cited in the instant petition and brief of petitioner.

It is respectfully prayed that the petition be allowed, in order that petitioner be granted the protection which is just and proper, as prayed for in the petition.

Dated, San Francisco, California,
September 10, 1948.

Respectfully submitted,
J. R. MASON,
Petitioner, Pro se.